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8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12
13 **G V SMOG**
GREGORY STEVEN FERGUSON,
14 **aka GREGORY S. FERGUSON, OWNER**
1641 East Main Street, #B
Grass Valley, CA 95945
15 **Automotive Repair Dealer Reg. No. ARD 251208**
Smog Check, Test Only, Station License No.
16 **TC 251208**
17 **and**
18 **GREGORY S. FERGUSON**
140 Manor Drive
19 **Grass Valley, CA 95945**
Advanced Emission Specialist Technician
20 **License No. EA 146059**
21 Respondents.

Case No. 79/12-78
ACCUSATION
(Smog Check)

22
23 Complainant alleges:

24 **PARTIES**

25 1. Sherry Mehl ("Complainant") brings this Accusation solely in her official capacity as
26 the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director
2 of jurisdiction to proceed with disciplinary action.

3 **STATUTORY PROVISIONS**

4 9. Bus. & Prof. Code section 9884.7 states, in pertinent part:

5 (a) The director, where the automotive repair dealer cannot show there
6 was a bona fide error, may deny, suspend, revoke, or place on probation the
7 registration of an automotive repair dealer for any of the following acts or omissions
8 related to the conduct of the business of the automotive repair dealer, which are done
9 by the automotive repair dealer or any automotive technician, employee, partner,
10 officer, or member of the automotive repair dealer.

11 (1) Making or authorizing in any manner or by any means whatever any
12 statement written or oral which is untrue or misleading, and which is known, or which
13 by the exercise of reasonable care should be known, to be untrue or misleading.

14

15 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or
16 place on probation the registration for all places of business operated in this state by
17 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,
18 engaged in a course of repeated and willful violations of this chapter, or regulations
19 adopted pursuant to it.

20 10. Bus. & Prof. Code section 22, subdivision (a), states:

21 "Board" as used in any provision of this Code, refers to the board in
22 which the administration of the provision is vested, and unless otherwise expressly
23 provided, shall include "bureau," "commission," "committee," "department,"
24 "division," "examining committee," "program," and "agency."

25 11. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a
26 "license" includes "registration" and "certificate."

27 12. Health & Saf. Code section 44072.2 states, in pertinent part:

28 The director may suspend, revoke, or take other disciplinary action
against a license as provided in this article if the licensee, or any partner, officer, or
director thereof, does any of the following:

(a) Violates any section of this chapter [the Motor Vehicle Inspection
Program (Health and Saf. Code § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

. . . .

(c) Violates any of the regulations adopted by the director pursuant to
this chapter . . .

1 1998 Ford Explorer were modified and had failed the visual inspection. In fact, the PCV system
2 and catalytic converter were fitted with the correct parts, were not damaged or modified, were
3 properly installed on the vehicle, and should have passed the visual inspection.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Violations of the Motor Vehicle Inspection Program)**

6 18. Respondent's smog check station license is subject to disciplinary action pursuant to
7 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
8 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the visual
9 inspection of the emission control systems and devices on the Bureau's 1998 Ford Explorer in
10 accordance with procedures prescribed by the department.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Failure to Comply with Regulations Pursuant**
13 **to the Motor Vehicle Inspection Program)**

14 19. Respondent's smog check station license is subject to disciplinary action pursuant to
15 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
16 provisions of California Code of Regulations, title 16, section 3340.42, as follows: Respondent
17 failed to conduct the required smog tests on the Bureau's 1998 Ford Explorer in accordance with
18 the Bureau's specifications.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violations of the Motor Vehicle Inspection Program)**

21 20. Respondent's technician license is subject to disciplinary action pursuant to Health &
22 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
23 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the visual
24 inspection of the emission control systems and devices on the Bureau's 1998 Ford Explorer in
25 accordance with procedures prescribed by the department.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 21. Respondent's technician license is subject to disciplinary action pursuant to Health &
5 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
6 of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
8 1998 Ford Explorer in accordance with Health & Saf. Code sections 44012 and 44035, and
9 California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
11 Bureau's 1998 Ford Explorer in accordance with the Bureau's specifications.

12 **UNDERCOVER OPERATION #2: 1990 PLYMOUTH SUNDANCE**

13 22. On June 23, 2011, a representative of the Bureau, acting in an undercover capacity
14 ("operator"), took the Bureau's 1990 Plymouth Sundance to Respondent's facility and requested a
15 smog inspection. All of the required emission control devices and systems on the Bureau-
16 documented vehicle were present, properly connected, and in good working condition. The
17 operator signed and received a copy of a written estimate. After the inspection was completed,
18 the operator paid the facility \$60 and received copies of an invoice and VIR. The VIR indicated
19 that the vehicle's ignition timing had failed the functional check, resulting in the vehicle's failure
20 of the overall inspection.

21 23. On June 24, 2011, the Bureau performed Acceleration Simulation Mode and TSI
22 California Emission Inspection tests on the vehicle. The vehicle passed all portions of both tests,
23 including the functional check. The Bureau found that the facility had improperly failed the
24 ignition system, as set forth below.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Untrue or Misleading Statements)**

27 24. Respondent's registration is subject to disciplinary action pursuant to Bus. & Prof.
28 Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized statements which

1 he knew or in the exercise of reasonable care should have known to be untrue or misleading, as
2 follows: Respondent certified under penalty of perjury on the VIR that the information listed on
3 the VIR was true and correct and that the Bureau's 1990 Plymouth Sundance had failed the
4 functional ignition timing test. In fact, all of the required emission control devices and systems
5 on the vehicle were present, properly connected, and in good working condition, and the vehicle
6 should have passed all portions of the smog inspection, including the functional check.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Violations of the Motor Vehicle Inspection Program)**

9 25. Respondent's smog check station license is subject to disciplinary action pursuant to
10 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with
11 section 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the
12 functional check of the emission control systems and devices on the Bureau's 1990 Plymouth
13 Sundance in accordance with procedures prescribed by the department.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Regulations Pursuant**
16 **to the Motor Vehicle Inspection Program)**

17 26. Respondent's smog check station license is subject to disciplinary action pursuant to
18 Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with
19 provisions of California Code of Regulations, title 16, section 3340.42, as follows: Respondent
20 failed to conduct the required smog tests on the Bureau's 1990 Plymouth Sundance in accordance
21 with the Bureau's specifications.

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Violations of the Motor Vehicle Inspection Program)**

24 27. Respondent's technician license is subject to disciplinary action pursuant to Health &
25 Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with section
26 44012, subdivision (f), of that Code, as follows: Respondent failed to perform the functional
27 check of the emission control systems and devices on the Bureau's 1990 Plymouth Sundance in
28 accordance with procedures prescribed by the department.

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant**
3 **to the Motor Vehicle Inspection Program)**

4 28. Respondent's technician license is subject to disciplinary action pursuant to Health &
5 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions
6 of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the Bureau's
8 1990 Plymouth Sundance in accordance with Health & Saf. Code sections 44012 and 44035, and
9 California Code of Regulations, title 16, section 3340.42.

10 b. **Section 3340.42**: Respondent failed to conduct the required smog tests on the
11 Bureau's 1990 Plymouth Sundance in accordance with the Bureau's specifications.

12 **MATTERS IN AGGRAVATION**

13 29. To determine the degree of discipline, if any, to be imposed on Respondent,
14 Complainant alleges as follows:

15 a. On or about December 21, 2007, the Bureau issued Citation No. C08-0579 against
16 Respondent, in his capacity as owner of G V Smog, for violations of Health & Saf. Code section
17 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
18 according to procedures prescribed by the department); and California Code of Regulations, title
19 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of compliance to a
20 vehicle that was improperly tested). On December 18, 2007, Respondent issued a certificate of
21 compliance to a Bureau undercover vehicle with a missing pulse air injection ("PAIR") system.
22 The Bureau assessed civil penalties totaling \$500 against Respondent for the violations.
23 Respondent paid the fine on February 21, 2008.

24 b. On or about June 18, 2008, the Bureau issued Citation No. C08-1103 against
25 Respondent, in his capacity as owner of G V Smog, for violations of Health & Saf. Code section
26 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices
27 according to procedures prescribed by the department); and Regulation 3340.35, subdivision (c)
28 (issuing a certificate of compliance to a vehicle that was improperly tested). On June 3, 2008,

1 Respondent issued a certificate of compliance to a Bureau undercover vehicle with a missing
2 thermostatic air cleaner hot air tube ("ACL"). The Bureau assessed civil penalties totaling \$1,000
3 against Respondent for the violations. Respondent paid the fine on August 21, 2008.

4 c. On or about December 1, 2005, the Bureau issued Citation No. M06-0277 against
5 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
6 technicians shall perform tests of emission control systems and devices in accordance with Health
7 & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall
8 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
9 and Regulation 3340.42). On or about November 22, 2005, Respondent issued a certificate of
10 compliance to a Bureau undercover vehicle with a missing air injection system. Respondent was
11 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
12 within 30 days from receipt of the citation. Respondent completed the training on January 20,
13 2006.

14 d. On or about May 9, 2006, the Bureau issued Citation No. M06-0712 against
15 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
16 technicians shall perform tests of emission control systems and devices in accordance with Health
17 & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall
18 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
19 and Regulation 3340.42). On or about March 9, 2006, Respondent issued a certificate of
20 compliance to a Bureau undercover vehicle with a missing PCV system. Respondent was
21 directed to complete a 16 hour training course and to submit proof of completion to the Bureau
22 within 30 days from receipt of the citation. Respondent completed the training on July 27, 2006.

23 e. On or about December 21, 2007, the Bureau issued Citation No. M08-0580 against
24 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
25 technicians shall perform tests of emission control systems and devices in accordance with Health
26 & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall
27 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
28 and Regulation 3340.42). On or about December 18, 2007, Respondent issued a certificate of

1 compliance to a Bureau undercover vehicle with a missing PAIR system. Respondent was
2 directed to complete an 8 hour training course and to submit proof of completion to the Bureau
3 within 30 days from receipt of the citation. Respondent completed the training on February 27,
4 2008.

5 f. On or about June 18, 2008, the Bureau issued Citation No. M08-1104 against
6 Respondent's technician license for violations of Health & Saf. Code section 44032 (qualified
7 technicians shall perform tests of emission control systems and devices in accordance with Health
8 & Saf. Code section 44012); and Regulation 3340.30, subdivision (a) (qualified technicians shall
9 inspect, test and repair vehicles in accordance with Health & Saf. Code sections 44012 and 44035
10 and Regulation 3340.42). On or about June 3, 2008, Respondent issued a certificate of
11 compliance to a Bureau undercover vehicle with a missing ACL. Respondent was directed to
12 complete a 16 hour training course and to submit proof of completion to the Bureau within 30
13 days from receipt of the citation. Respondent completed the training on August 19, 2008.

14 OTHER MATTERS

15 30. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
16 suspend, revoke, or place on probation the registration for all places of business operated in this
17 state by Respondent Gregory Steven Ferguson, also known as Gregory S. Ferguson, owner of
18 G V Smog, upon a finding that Respondent has, or is, engaged in a course of repeated and willful
19 violations of the laws and regulations pertaining to an automotive repair dealer.

20 31. Pursuant to Health & Saf. Code section 44072.8, if Smog Check, Test Only, Station
21 License Number TC 251208, issued to Respondent Gregory Steven Ferguson, also known as
22 Gregory S. Ferguson, owner of G V Smog, is revoked or suspended, any additional license issued
23 under this chapter in the name of said licensee may be likewise revoked or suspended by the
24 Director.

25 32. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
26 Technician License Number EA 146059, issued to Gregory S. Ferguson, is revoked or suspended,
27 any additional license issued under this chapter in the name of said licensee may be likewise
28 revoked or suspended by the Director.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 251208, issued to Gregory Steven Ferguson, also known as Gregory S. Ferguson, owner of G V Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to Gregory Steven Ferguson, also known as Gregory S. Ferguson;
3. Revoking or suspending Smog Check, Test Only, Station License Number TC 251208, issued to Gregory Steven Ferguson, also known as Gregory S. Ferguson, owner of G V Smog;
4. Revoking or suspending Advanced Emission Specialist Technician License Number EA 146059, issued to Gregory S. Ferguson;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Gregory Steven Ferguson, also known as Gregory S. Ferguson;
6. Ordering Gregory Steven Ferguson, also known as Gregory S. Ferguson, individually, and as owner of G V Smog, to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
7. Taking such other and further action as deemed necessary and proper.

DATED: 2/9/12

Sherry Mehl by Doug Balaban
SHERRY MEHL
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant
ASSIST CHIEF

SA2011102651